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No. 960

Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM—1958.

UNITED STATES DREDGING CORPORATION,

Petitioner,

—*against*—

JULIA NORA McMAHON KROHMER, as Administratrix of the Goods, Chattels, and Credits of George William Krohmer, Deceased.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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---

PETITION FOR WRIT OF CERTIORARI.

The petition of United States Dredging Corporation respectfully shows:

A.

Citation of the Opinions Below.

The opinion of the United States District Court, Eastern District of New York, is not reported. It is at page 39 of the Appendix.

The opinion of the United States Court of Appeals, Second Circuit, is reported at 264 Fed. 2nd 339 and is at pages 15 to 19 of this petition.

B.

The Jurisdiction of this Court.

(i) The judgment of the United States Court of Appeals for the Second Circuit is dated March 6, 1959 and was entered the same day.

(ii) The jurisdiction of this Court is invoked under Title 46 U. S. Code; Section 183, Act of March 3, 1851, c. 43, 9 Stat. 635.

C.

Questions Presented.

Does 46 U. S. C. 183a, which provides for limitation of a vessel owner's liability to "the value of the interest of such owner in such vessel and her freight then pending" require a vessel owner to surrender in a limitation of liability proceeding the value of all of such owner's vessels engaged in the performance of a contract with third parties, when the loss involved solely an employee whose duties were performed exclusively aboard one vessel and had no concern with the other vessels which the owner used to perform the contract with the third parties.

Was the Limitation of Liability statute, enacted in the public interest and as a matter of public policy, given a liberality of construction by the United States Court of Appeals sufficient to give full benefit of immunities intended to be secured to shipowners.

D.

Statutes and Rule Involved.

The case involves:

The Limitation of Vessel Owner's Liability Act, 46 U. S. Code, Section 183 which reads:

> "Amount of liability; loss of life or bodily injury; privity imputed to owner; 'seagoing vessel'
>
> (a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement,

loss or destruction by any person of any property, goods or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

Since procedural and venue requirements are stated in Admiralty Rules 51 and 54, those rules are set out in full in the Appendix.

E.

Statement of the Case.

The litigation arises from a flash fire which broke out in the engine room of the motor vessel *Nip* on December 22, 1955, in Huntington Harbor, Long Island, New York, resulting in personal injuries to one person and the death of the other on board.

Invoking the statutory remedy of limitation of liability (46 U. S. C. A., 183, *et seq.*), petitioner, pursuant to the venue requirements of Admiralty Rule 54, instituted a proceeding for exoneration from or limitation of liability in the United States District Court, Eastern District of New York.

Upon the filing of the petition, the court, *ex parte*, entered the usual order for the filing of an *ad interim* stipulation, the issuance of a monition and a restraining order staying and restraining the beginning or prosecution of suits against the petitioner or its vessel, the *Nip*, in

respect of any claims arising out of the incident. Petitioner, pursuant to the Supreme Court Admiralty Rules, surrendered the value of the *Nip* by filing security for such amount.

The Administratrix of the estate of the deceased captain of the *Nip*, Krohmer, moved to dismiss the petition for limitation of liability, or in the alternative to direct petitioner to surrender in such proceeding its dredge *Magic City* and various other craft, asserting that along with the *Nip*, said vessels were included in the common venture of dredging Huntington Harbor under a contract between petitioner and the trustees of the Town of Huntington.

Petitioner urged that the vessel *Nip* was the only vessel to be surrendered pursuant to the Admiralty Rules to obtain the limitation of liability provided by the statute.

The District Court referred to a Commissioner the issue of which vessels were engaged in a "single venture" or "common enterprise", during the year 1955 and especially on December 22, 1955 (the date of the occurrence) (Appendix, pp. 28, 29).

The report of the Commissioner concluded that all six vessels were engaged in the "single venture" or "common enterprise" of dredging Huntington Harbor and that petitioner should surrender their combined value (Appendix, pp. 30 to 38).

Exceptions to the report were overruled and the District Court confirmed the report of the Commissioner (Appendix, p. 39) and ordered the petition be dismissed and the restraining order dissolved unless petitioner surrendered the six vessels or their value within a certain time which was not done (Appendix, pp. 40, 41).

Upon appeal from the order, the United States Court of Appeals affirmed (Appendix, pp. 137 to 141).

The Circumstances of the Occurrence.

On December 22, 1955, the petitioner was engaged in dredging Huntington Harbor, Long Island, New York, under a contract with the trustees of the Town of Huntington. In the performance of its contract, petitioner used the dredge *Magic City*, the Oil Screws *Nip*, *Tuck* and *New Harbor*, and the barges *U. S. D. No. 2* and *Roy H.* The oil screws including the *Nip* were used to transport men who operated the dredge to and from that vessel, to assist in the moving of the dredge from place to place, to tow the barges to and from alongside the dredge, to carry supplies and the like, as well as to perform towage services, entirely independent of and separate and apart from the dredging work.

The deceased Krohmer was employed and assigned to the *Nip* exclusively. The *Nip* alone was the vessel involved in or devoted to the performance of the contract of employment between the deceased and petitioner. Krohmer had no duties aboard any other vessel and was required to operate the *Nip* wherever needed. Except for an occasional substitution aboard another vessel for a sick or vacationing employee, he remained exclusively aboard the *Nip*.

On December 22, 1955 the launch *Nip* was underway and entering Cold Spring Harbor, Long Island, New York. The *Nip* was proceeding to pick up a barge and then to tow it to alongside the dredge *Magic City* which was in Huntington Harbor some distance away. A flash fire occurred in the engine room which immediately spent itself causing only superficial damage to the engine room and no damage to any other part of the vessel. It is claimed that the occurrence resulted in the death of Krohmer.

The Decisions.

The District Court held that since petitioner had a contract with the Town of Huntington, Long Island, to dredge that harbor and used various vessels, including the *Nip*, in the performance of that contract, petitioner could not limit liability with respect to the claim for loss of life of its employee Krohmer, unless it surrendered in the limitation proceeding the value of all vessels devoted to its contract with the Town of Huntington.

The Court of Appeals recognized that a new question is involved in this case. It referred to the well-settled law that even though a petitioner may own several vessels comprising a flotilla involved in a collision, liability is limited to the value of the "offending" vessel when the loss is sustained by a party who had no contractual relations with the petitioner for limitation.

The Court of Appeals also referred to the rule of the cargo carrier cases, that where more than one vessel (*e. g.*, a tug towing a barge) are engaged in the performance of a contract with the party who suffers the loss, all vessels so engaged must be surrendered. The Court of Appeals affirmed the District Court.

Reasons for Allowance of the Writ.

1. The question involved affects the entire shipping industry in the United States. It is not confined to the parties to this suit. Every owner of more than one vessel is affected by the determination of the number of vessels whose value must be surrendered in a limitation of liability proceeding involving an employee injury or death claim. The national importance of the case to United States vessel owners and their employees is readily apparent. The deci-

sion will control maritime claims against United States vessels arising not only in the United States, but anywhere in the world.

2. The question of law involved applies to all types of craft, large and small. It is not confined to dredges. Ocean craft use tugs to help them in almost every port.

3. The ruling of the Court of Appeals extends the meaning of the word "vessel" as used in the Limitation of Liability Act.

4. This Court in interpreting the limitation of liability statute has long carried out the rule that a liberal interpretation should be given the statute. The decision of the Court of Appeals removes many benefits conferred on ship owners by the statute.

Amplification.

While the amount of money involved in this case is substantial, it is not indicative of the gravity of the legal questions decided in it. These questions are of special and widespread importance, and will become more so in view of the recent opening of the St. Lawrence Seaway. The Seaway will not only substantially increase the volume of shipping on the Great Lakes and other waters, but will also increase the extent of dredging operations in ports which have grown in importance since the Seaway opened. Situations similar to the one presented here will be bound to arise and a resolution of the questions of the extent to which a ship owner may limit his liability in employer-employee cases should be expressed by this Court.

The limitation of liability statute (46 U. S. Code 183) permits a ship owner to limit the extent of liability incurred

without privity or knowledge of the owner to the amount or value of the interest of such owner in such vessel and particular freight then pending.

The first question as applied to this particular case is to determine, within the meaning of the statute, what is a "vessel" for the purpose of surrendering the value of the interest of a ship owner in a vessel by which a loss, damage or injury was occasioned.

The authorities covering this point hold that the term "vessel" is extended to include more than one only where more than one was performing a contract between petitioner and claimant at the time the loss occurred.

In *The George W. Pratt* (C. C. A. 2), 76 Fed. 2d 902, the Court held that only the tug performing the contract of towing at the time of the fault must be surrendered even though only shortly before loss, other tugs of the same ownership had been performing the towage.

The Court said at p. 903:

> "We think the rule is established that the vessels to be surrendered are those devoted to the performance of the contract at the particular time of the fault which causes the loss is committed".

Implicit in this decision is the idea that the vessels to be surrendered must be engaged in performing the contract between petitioner and the damaged party.

As further stated by the Court at page 904:

> "There is nothing . . . to indicate that the owner is required to surrender anything more than the vessels devoted as a unitary instrumentality to the undertaking . . ."

The Court's reference to the undertaking was to the contract of towage between the petitioner and the damage-claimant.

In *Sacramento Navigation Co.* vs. *Salz*, 273 U. S. 326, 71 L. Ed. 663, this Court, in following the doctrine of the Columbia 73 Fed. 226 (C. C. A. 9), held that when a barge and tug were transporting a cargo of barley for a shipper, both were to be deemed a single "vessel" and the tug must be surrendered as well as the barge. In that case the damage-claimant contracted to have his cargo transported by petitioner. While the cargo was being towed in a barge, the barge collided with another vessel and claimant's cargo was damaged. The negligence of the towing tug was found to be the cause of the collision. Petitioner filed for limitation of liability to the value of his barge. This Court, in holding that both the tug and barge must be surrendered, said at page 329:

> "Considering the language of the Bill of Lading in the light of all the circumstances, it is manifest that we are dealing with a single contract and the use of the tug must be read into the contract as an indispensable factor in the performance of its obligations . . . In this view, by the terms of the contract of afreightment, in part expressed and in part necessarily resulting from that which was expressed, the transportation of the goods was called for not by the barge, an inert thing, but by the barge and tug, constituting together the effective instrumentality to that end".

This Court, in determining which vessels must be surrendered, solved the problem by examining the contract between petitioner and damage-claimant. It thus laid down the test which should have been applied in this case. Here the Court of Appeals failed to consider that the important criteria in determining which vessels must be surrendered, was not the contract of the petitioner and the Trustees of the Town of Huntington, or a contract between

petitioner and any other Third-Party, but rather the contract from which this damage-claimant derives rights against petitioner, namely, the contract of employment.

The contract between Petitioner and the deceased related only to the *Nip*, the vessel on which the deceased was employed and on board which he met his death. Claimant Administratrix has brought a civil action in the United States District Court for the Southern District of New York. Her claim is based on the rights of deceased under the Jones Act and for failure to furnish a seaworthy vessel. Both causes of action are rights given to this seaman solely because of his contract of employment aboard the *Nip*. These causes must be the basis of her claim in this proceeding. They do not arise because petitioner supplied the *Nip* to a third party under a contract of dredging. They arise only because the petitioner allegedly failed to perform its duties to the deceased while aboard the *Nip*. Said vessel is the only vessel which was supplied under the contract between petitioner and the deceased and we submit is the only vessel which must be surrendered for limitation of liability purposes.

Standard Dredging Co. against *Kristiansen* (CCA2), 67 Fed. 2nd 548, Certiorari denied 290 US 704, 78 L. Ed. 605, is a case which this Court may examine to resolve the definition of the term "vessel" and also the question of what must be surrendered in a limitation of liability proceeding. Kristiansen, a seaman employed as a deck hand aboard the dredge, was ordered by the Master of the dredge to go on board a nearby barge also owned by petitioner, and place a light thereon. While on the barge he fell through a defective hatch and was injured. A limitation petition was filed and only the value of the barge surrendered. Claimant Kristiansen demanded that the value of the dredge be surrendered as well. The District

Court ordered the dredge and the barge, or their value, surrendered and the Court of Appeals for the 2nd Circuit affirmed.

The Court of Appeals in its opinion emphasized that Kristiansen's rights against his employer, the petitioner, arose out of a contractual relationship, namely the contract of employment. The Court stated at page 550:

> "That National Dredging Company's duty to Kristiansen involved contractual obligations seems to us clear."

Once having determined that a contractual relationship existed, viz., the employment contract under which Kristiansen was a member of the crew of the dredge, the Court reached the conclusion that both the dredge on which he was employed and the "offending" barge should be surrendered.

It was undisputed that Kristiansen was a member of the crew of the dredge and performed most of his duties on that vessel. The barge on which he was injured carried fuel for the dredge and it was the duty of the dredge's deck hand, on that occasion Kristiansen, to leave the dredge and step aboard the barge to place a light and then return to the dredge and continue working aboard the dredge. There can be no doubt of the soundness of the Court's ruling that since Kristiansen was a member of the crew of the dredge there was an actual contractual relationship between him and the dredge owner, and the dredge was the primary instrumentality involved in the employment contract. The Court applied established law when it ruled that the dredge owner was required to surrender such instrumentality because it was involved in the performance of its contract with Kristiansen but the Court could not

have referred to the dredge owner's contract with anyone other than the employee.

In *Deep Sea Tankers Ltd.* v. *Central Railroad of New Jersey, et al.*, 258 Fed. 2d 757 (C. A. 2), Certiorari denied, 3 Law Ed. 305, the Court stated (page at 774 of the Opinion):

> "Those cases cited by appellants, in support of their position that a passive instrument as well must be surrendered, involve a breach of contract where the libellant had entered into a contractual agreement with the respondent, either for transportation . . . or of employment, Standard Dredging Company *v.* Kristiansen. . ."

The second question involved is the construction to be afforded the limitation of liability statutes.

The decision of the Court of Appeals herein affirming the District Court's order to surrender the several vessels hereinbefore mentioned, removes much of the benefit conferred on shipowners by the statutes. As was said in *Providence and New York Steamship Company* v. *Hill Manufacturing Co.*, 109 U. S. 578, 27 L. Ed. 1038, at page 1042, and quoted with approval in *The Princess Sophia*, 61 Fed. 2nd 339, Certiorari denied, 288 U. S. 604, 77 L. Ed. 980, when referring to the limitation of liability statutes and their interpretation:

> "If it is administered with a tight and grudging hand, construing every clause most unfavorably against the shipower, and allowing as little as possible to operate in his favor, the law will hardly be worth the trouble of its enactment."

In limitation of liability cases, distinction has been made between claims arising in tort and those arising out of contract. In a tort case involving a tug towing a car float,

which by negligent management caused damage to another vessel by collision between it and the car float, the car float, being a passive instrumentality, only the tug need be surrendered. *Liverpool, etc. Nav. Co.* against *Brooklyn Eastern District Terminal*, 251 U. S. 48.

As stated in *The Calvin*, 9 Fed. Supp. 411 at p. 413:

> "The inclusion by construction of other maritime units of conveyance, in addition to the one directly involved, in the term 'vessel' as used in the limited liability act, seems by the later cases to be justified more liberally, if not exclusively, in cases arising in contract rather than in tort. See *Kristiansen* case, *supra*. But even in contract cases the further extension of the term 'vessel' and thus a further narrowing of the effect of the limited liability act, would seem to run counter to the policy of liberal construction of this act which has been quite consistently maintained by the courts since its enactment in 1851 (9 Stat. 635). *Flink* v. *Paladini*, 279 U. S. 59, 62, 49 S. Ct. 255, 73 L. Ed. 613; *In re East River Co.*, 266 U. S. 355, 45 S. Ct. 114, 69 L. Ed. 324; *California Yacht Club* v. *Johnson*, 65 F. (2d) 245 (C. C. A. 9)."

To show how the decision of the Court of Appeals has rendered ineffectual the limitation of liability statutes, consideration should be given to a hypothetical situation which might easily arise. Assume a major oil company, pursuant to a contract with a consumer, devotes all of its large tankers to the purpose of transporting oil from the oil fields to the consumer. Assume that several tugs are necessary to dock a large ocean tanker and that all tankers and tugs are owned and operated by the oil company. Assume further that a deck hand of one tug is injured while the tugs are in the process of docking the oil tanker.

Carrying out the reasoning of the Court of Appeals in this particular case, since all vessels were engaged in the common venture of transporting the oil, a damage claimant could demand the surrender of all of the tankers and tugs (or any of the vessels if he felt her value to be sufficient). Such a decision would mean that a shipowner could never limit his liability to any value less than that of all the vessels engaged in the common venture and would render the limitation of liability statutes completely ineffectual. The purpose of protecting the shipowner would be defeated.

The long and liberal interpretation of this court of the limitation of liability statutes should not be changed and we submit that such interpretation should be followed in this instance.

Providence & New York Steamship Co. v. *Hill Manufacturing Co., supra; Just* v. *Chambers*, 61 S. Ct. 427, 85 L. Ed. 903.

Conclusion.

WHEREFORE, petitioners pray that a writ of certiorari be granted and the proceeding reviewed by this Court.

UNITED STATES DREDGING CORPORATION,
Petitioner

By CHRISTOPHER E. HECKMAN, Counsel

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May 28, 1959.

APPENDIX.

Opinion of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

No. 133—October Term, 1958.

(Argued January 19, 1959 Decided March 6, 1959.)

Docket No. 25287

IN THE MATTER

OF

The Petition of UNITED STATES DREDGING CORPORATION as owner of Motor Launch *Nip* for exoneration from or limitation of liability.

UNITED STATES DREDGING CORPORATION,

Appellant,

v.

JULIA NORA McMAHON KROHMER, as Administratrix of the Goods, Chattels and Credits of George William Krohmer, deceased,

Appellee.

Before:

HAND and WATERMAN, Circuit Judges, and BYERS, District Judge.

On appeal by the United States Dredging Corporation from an order of the District Court for the Eastern District

of New York, dismissing its petition for a limitation of liability under §183 of Title 46, U. S. Code, unless the petitioner surrendered other vessels than it tendered to respond to the claims of persons injured in Cold Spring Harbor, Long Island Sound.

CHRISTOPHER E. HECKMAN, for the appellant.

EDWARD J. BEHRENS, for the appellee.

HAND, Circuit Judge:

This appeal is from an order of Judge Abruzzo, dismissing the appellant's petition for limitation of liability under §183 of Title 46 of the U. S. Code, unless it surrendered five additional vessels owned by it to answer the claims for injuries or death of two persons who had been employed on board the appellant's launch, *Nip*. After the petition had been filed the appellee, widow of one of the petitioner's employees, sued the appellant for the death of her intestate due to the appellant's negligence in allowing a "flash fire" to occur on the *Nip* which blew him overboard and caused his death. Another employee on the *Nip* had also threatened to sue for injuries caused by the same accident. The only issue is whether the *Nip* is the only vessel that the appellant must surrender in order to limit its liabilities, or whether it must also surrender five other vessels that were engaged in the same venture at the time. Judge Abruzzo referred the cause to a commissioner to report the facts, who recommended that the appellant must surrender the additional vessels. The judge affirmed the findings with a conceded modification, and denied the appellant's petition for an injunction. The facts reported were found as follows.

> "On November 9, 1948 a contract was entered into between Trustees of the Town of Huntington and U. S. Dredging whereby U. S. Dredging was engaged to dredge portions of Huntington Bay and Huntington Harbor indicated on certain maps or surveys; to

remove gravel therefrom; to load the gravel on vessels and carry the gravel away. . . .

. . . U. S. Dredging to fulfill its part of the contract used the Dredge *Magic City,* the Oil Screws *Nip, Tuck* and *New Harbor, U. S. D. No. 2* the *Arthur McCabe* the *Roy H.* and the *Stockton.* During the year 1955 and on December 22, 1955, . . . the Motor Launches *Nip, Tuck* and *New Harbor* transported men, who operated the dredge, to and from the *Magic City;* these motor launches moved the dredge from place to place, they transported empty barges alongside the dredge and removed full barges to moorings where they would be taken in tow by larger tug boats and towed to various places. These motor launches received their fuel and water from the *Magic City* and also were repaired by the mechanics who served aboard the *Magic City.* The motor launches were moored alongside the *Magic City* when not in use excepting when they were sent to a shipyard for painting. Usually the *Magic City* was moved by one or all of these motor launches, however, on a few occasions a larger tug moved the *Magic City,* but one of these motor launches always helped and assisted in the moving of the *Magic City.* These launches also towed the fuel boat *Roy H.* and the *Stockton,* the barge upon which all spare parts, tools and other materials were stored, to and from the *Magic City.* These launches also moved the crane *Arthur McCabe* into position so that it could lift the anchors and cables of the *Magic City* before she could be moved. The crane like the *Magic City* had no means of self propulsion and therefore like the *Magic City* had to be towed by the launches. Hence in order for U. S. Dredging to perform its part of the contract in Huntington Harbor the *Magic City* did the actual dredging and the motor launches transported the crews aboard; towed the barges that carried water, fuel and materials to the *Magic City;* towed the cranes that lifted the anchors and cables

> and towed the *Magic City* from place to place when it was necessary. . . . [I]t was impossible for the dredge to operate and work unless some craft brought the crews aboard, transported the water and fuel barges to and from the dredge, lifted the anchors, towed away the gravel barges and towed the dredge from place to place."

It is a ready explanation of the limitation statute that it is derived from the ancient personification of the ship as a wrongdoer, but we are assured (*In re East River Co.*, 266 U. S. 355, 366), that "the origin of the Admiralty rule . . . cannot be answered with confidence from the historical material now [1924] at hand." When the shipowner's liability presupposes no preceding consensual relation with the injured party, but arises from a base invasion of his interests, it can be safely asserted that the surrender of only the damage feasant vessel is necessary in order to secure limitation. *Deep Sea Tankers* v. *The Long Branch*, 258 Fed. (2) 757, 733-74 (C. A. 2). Moreover, although the shipowner had made a contract to be performed by several tugs to tow the claimant's barge, as part of a flotilla, after the barge was separated from the others, and was being towed to its destination by a single tug, we held that the limitation was conditional upon the surrender of that "vessel" only. *The George W. Pratt*, 76 Fed. (2) 902 (C. A. 2). We regarded that original "venture" as ended and a new one as being under way. The case at bar is not that. The launch, *Nip*, at the time of the "flash fire" was going to fetch an empty barge from where she lay and put her alongside the *Magic City* to be there laden with gravel and then taken away by one of the launches, like the *Nip*, to be discharged outside the Harbor of Huntington. Not only was the *Magic City* without power of propulsion, but the men who worked upon her had to be taken back and forth at night by the launches; her oil and other supplies to be brought to her by still other craft. In short, all these attending "vessels"

were necessary to the performance of their owner's contract with the town.

In *Sacramento Navigation Co.* v. *Salz*, 273 U. S. 326, although the case arose under the Harter Act, the Court resolved it by application of the same rules that limit a shipowner's liability; and following the doctrine of *The Columbia*, 73 Fed. Rep. 226 (C. C. A. 9), held that, when a barge and tug were transporting a cargo of barley, both were to be deemed a single "vessel," and the tug must be surrendered as well as the barge. In *Standard Dredging Co.* v. *Kristiansen*, 67 Fed. (2) 548 (C. A. 2), a seaman employed on a dredge was injured while working on an unseaworthy barge, which was used as a tender to supply oil to the dredge, and which at the time was not made fast to her. We held that the dredge must be surrendered as well as the barge, because each was part of the means that the shipowner was using to perform its contract. The owner had assumed "contractual obligations" with the claimant, and that involved any ships that it devoted to the performance of its contract with a third person. As a new question it is hard to see why the shipowner's liability should be broader when it presupposes a consensual relation with the claimant than when it rests upon the invasion of the interest of a person with whom the owner has had no preceding relation. However, it is at least doubtful whether the motives that originally lay behind the limitation are not now obsolete, and certainly we should now have no warrant for extending its scope, when the liability is for personal injury arising from the shipowner's fault.

Order affirmed.

Statutes Involved.

UNITED STATES CODE ANNOTATED.

Title 46, Section 183.

AMOUNT OF LIABILITY; LOSS OF LIFE OR BODILY INJURY; PRIVITY IMPUTED TO OWNER; "SEAGOING VESSEL".

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to any amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purpose of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such

tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. R. S. §4283; Aug. 29, 1935, c. 804, §1, 49 Stat. 960; June 5, 1936, c. 521, §1, 49 Stat. 1479.

United States Supreme Court Admiralty Rules Nos. 51 and 54.

RULE 51—Limitation of Liability—How Claimed

The owner or owners of any vessel who shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the Act of March 3, 1851, entitled "An Act to limit the liability of shipowners and for other purposes" (Sections 183 to 189 of Title 46 of the U. S. Code) as now or hereafter amended or supplemented, may file a petition in the proper District Court of the United States, as hereinafter specified. Such petition shall set forth the facts and circumstances on which limitation of liability

is claimed, and pray proper relief in that behalf. It shall also state facts showing that the petition is filed in the proper district; the voyage on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort, arising on that voyage, so far as known to the petitioner, and what suits, if any, are pending thereon; whether the vessel was damaged, lost or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If any of the above particulars are not fully known to the petitioner, a statement of such particulars according to the best knowledge, information, and belief of the petitioner shall be sufficient. With his petition the petitioner may, if he so elects, file an interim stipulation, with sufficient sureties or an approved corporate surety, for the payment into court whenever the court shall so order, of the aggregate amount of the value of petitioner's interest in the vessel at the close of the voyage or, in case of wreck, the value of the wreckage, strippings or proceeds, and of any pending freight recovered or recoverable, with interest at six percent per annum from the date of the stipulation, and costs. If such interim stipulation is filed, it shall be accompanied by an affidavit or affidavits of a competent person or persons corroborating the statement in the petition as to value of the vessel, or her wreckage, etc., and her freight. Said court, having caused due appraisements to be had of the value of petitioner's interest in the vessel, or her wreckage, etc., and her freight shall make an order for the payment of the same into court, or for the giving of a stipulation, with sufficient sureties or an approved corporate surety, for the payment thereof into court with interest at six percent per annum from the date of the stipulation, whether interim or final, and costs, whenever the same shall be ordered; or, if the petitioner shall so elect, the court without such appraisement shall make an order for the transfer by the petitioner of his interest in

such vessel, or her wreckage, etc., and freight to a trustee to be appointed by the court under the fourth section of said Act.

If a surrender of petitioner's interest in the vessel or her wreckage, etc., is offered to be made to a trustee, the petition must further show any prior paramount liens thereon, and what voyage or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

Upon the filing of such interim stipulation, or upon determination of value by appraisal and compliance with the court's order with respect thereto, or upon compliance with a surrender order, as the case may be, the court shall issue a monition against all persons asserting claims in respect to which the petition seeks limitation, citing them to file their respective claims with the Clerk of said court and to serve on or mail to the proctors for the petitioner a copy thereof on or before a date to be named in said writ which shall be not less than 30 days after issuance of the same, which time the court, for cause shown, may enlarge.

Notice of the monition shall be published in such newspaper or newspapers as the court by rule or order may direct in substantially the following form, once in each week for four successive weeks before the return day of the monition:

United States District Court
District of

Notice of Petition for Exoneration from or Limitation of Liability

(Filed .....)

Notice is given that ..... has filed a petition pursuant to Title 46, U.S. Code, §§183-189, claiming the right

to exoneration from or limitation of liability for all claims arising on the voyage of the vessel ....., from ..... to ..... terminating on .....

All persons having such claims must file them, under oath, as provided in United States Supreme Court Admiralty Rule 52, with the Clerk of this Court, at the U. S. Court House at ..... and serve on or mail to the petitioner's proctors ..... at ..... a copy on or before ..... or be defaulted. Personal attendance is not required.

Any claimant desiring to contest the claims of petitioner must file an answer to said petition, as required by Supreme Court Admiralty Rule 53, and serve on or mail to petitioner's proctors a copy.

.....

U. S. Marshal.

The petitioner not later than the day of second publication shall also mail a copy of the above notice (copy of the monition need not be mailed) to every person known to have made any claim against the vessel or the petitioner arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice, together with a copy of Rule 52, shall be mailed to the decedent at his last-known address, and also to any person who shall be known to have made any claim on account of such death.

The said court shall also, on the application of the petitioner, make an order to restrain the further prosecution of all and any suit or suits against the petitioner and/or said vessel in respect to any claim or claims subject to limitation in the proceeding.

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RULE 54—COURTS HAVING COGNIZANCE OF LIMITED LIABILITY PROCEDURE

The said petition shall be filed and the said proceedings had in any District Court of the United States in which said vessel has been libeled to answer for any claim in

respect to which the petitioner seeks to limit liability; or, if the said vessel has not been libeled, then in the District Court for any district in which the owner has been sued in respect to any such claim. When the said vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner, the said proceedings may be had in the District Court of the district in which the said vessel may be, but if said vessel is not within any district and no suit has been commenced in any district, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any district for the convenience of the parties. If the vessel shall have already been sold, the proceeds shall represent the same for the purposes of these rules.